

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PAUL W. DRIGGERS,

Plaintiff,

v.

JOHN DOE I, S.I.S. Lieutenant, FDC SeaTac,  
*et al.*,

Defendants.

Case No. C11-1630-JCC-MAT

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

This is a civil rights action proceeding under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Plaintiff Paul Driggers originally filed this action in the United States District Court for the Western District of Oklahoma alleging violations of his constitutional rights by three employees of the Federal Bureau of Prisons and three federal agencies. Plaintiff's claims against one of the six original defendants, John Doe I, was subsequently transferred to this District pursuant to 28 U.S.C. § 1631.

After receiving the case, this Court conducted an initial screening of plaintiff's claims against John Doe I and found them to be deficient. The Court therefore declined to serve the

01 complaint and granted plaintiff leave to file an amended complaint curing specified  
02 deficiencies. Plaintiff thereafter filed an amended complaint in which he identified two  
03 defendants: John Doe I and the Federal Bureau of Prisons. This Court ordered the amended  
04 complaint served on the Federal Bureau of Prisons and the United States has now filed a motion  
05 to dismiss.<sup>1</sup> Plaintiff has filed a response to the motion to dismiss and the United States has  
06 filed a reply brief in support of its motion. The Court, having reviewed the pending motion to  
07 dismiss, and the balance of the record, recommends that the motion to dismiss be granted and  
08 that plaintiff's amended complaint and this action be dismissed with prejudice.

09 BACKGROUND

10 Plaintiff filed his original complaint in the United States District for the Western  
11 District of Oklahoma on August 9, 2010. (Dkt. No. 1.) Plaintiff identified the following six  
12 defendants in his complaint: (1) A. Clark, a Special Housing Unit ("SHU") Lieutenant  
13 employed at the Bureau of Prisons ("BOP") at the Federal Transfer Center ("FTC") in  
14 Oklahoma City; (2) John Doe I, an SIS Lieutenant responsible for classifying new inmates at  
15 FDC SeaTac; (3) John Doe II, a housing assignment officer at FTC Oklahoma City; (4) the  
16 Federal Bureau of Prisons; (5) the National Crime Information Center ("NCIC") of the Federal  
17 Bureau of Investigation ("FBI"); and, (6) the United States Probation Office ("USPO") in  
18 Phoenix, Arizona. (*See id.* at 6-7.) Plaintiff alleged in his complaint that in "about June  
19 2008," while confined at FDC SeaTac, John Doe I, learned of plaintiff's prior KKK  
20 membership, arbitrarily determined that the KKK was a gang, and falsely designated plaintiff

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22 <sup>1</sup> The complaint was not ordered served on John Doe I because plaintiff failed to provide sufficient  
identifying information to permit the Court to effectuate service on that defendant.

01 as “gang affiliated.” (Dkt. No. 1 at 8.) Plaintiff asserted that John Doe I’s actions violated  
02 due process. (*See id.* at 8 and 10.) Plaintiff further alleged in his complaint that prior to John  
03 Doe I’s alleged misconduct, plaintiff had attempted to persuade both the USPO in Phoenix,  
04 Arizona and the FBI-NCIC – the sources of John Doe I’s information concerning plaintiff’s  
05 KKK affiliation – to delete or redact the information as irrelevant and unfairly prejudicial. (*Id.*  
06 at 8-9.)

07 Plaintiff also alleged in his complaint that John Doe I’s “false labeling” caused him to  
08 be placed in a room with Aryan Brotherhood gang members while he was confined at FTC  
09 Oklahoma City in August 2008 and that he was physically assaulted and injured during this  
10 incident. (*Id.* at 9.) Plaintiff alleged that almost two years later, in July 2010, while again  
11 confined at FTC Oklahoma City, John Doe II assigned him to administrative segregation, and  
12 placed him in a cell with an Aryan Brotherhood gang member, because of his KKK affiliation.  
13 (*Id.*) Plaintiff further alleged that when he complained to A. Clark about his housing  
14 assignment defendant Clark denied relief “because [plaintiff] had been a Klansmen [sic].”  
15 (*Id.*) Plaintiff sought damages and injunctive relief in his original complaint. (*Id.* at 11.)

16 Plaintiff’s complaint was referred to United States Magistrate Judge Gary M. Purcell for  
17 initial proceedings. (Dkt. No. 6.) After reviewing plaintiff’s complaint, Magistrate Judge  
18 Purcell issued a Report and Recommendation recommending that the action be dismissed  
19 pursuant to 28 U.S.C. §§ 1915A(b) and 1915(e)(2)(B). (Dkt. No. 13.) Magistrate Judge  
20 Purcell concluded that plaintiff’s claims against the three federal agencies should be dismissed  
21 for failure to state a claim on the grounds that *Bivens* claims cannot be asserted against federal  
22 agencies. (*See* Dkt. No. 13.) Magistrate Judge Purcell also concluded that plaintiff’s claims

01 against John Doe I should be dismissed for lack of personal jurisdiction. (*Id.*) Finally,  
02 Magistrate Judge Purcell concluded that plaintiff's claims against A. Clark and John Doe II  
03 should be dismissed for failure to state a claim for relief. (*Id.*) Plaintiff filed objections to the  
04 Report and Recommendation, but the Report and Recommendation was ultimately adopted by  
05 United States District Judge Robin J. Cauthron. (Dkt. Nos. 18 and 19.)

06 Plaintiff thereafter appealed the dismissal of his complaint to the United States Court of  
07 Appeals for the Tenth Circuit. (Dkt. No. 21.) The Tenth Circuit affirmed the dismissal of  
08 plaintiff's claims against the five defendants for failure to state a claim. (Dkt. No. 29.) The  
09 Tenth Circuit also affirmed the decision that the Western District of Oklahoma lacked personal  
10 jurisdiction over the sixth defendant, John Doe I, but remanded the case to the District Court for  
11 a determination of whether plaintiff's claims against John Doe I should be transferred under 28  
12 U.S.C. § 1631 rather than dismissed. (*Id.*)

13 Following the remand, plaintiff filed a motion in the Western District of Oklahoma to  
14 transfer his case pursuant to § 1631 in order to prompt the District Court to make the  
15 determination required by the Tenth Circuit on remand. (*See* Dkt. No. 31.) On September 23,  
16 2011, Magistrate Judge Purcell issued a Supplemental Report and Recommendation  
17 recommending that plaintiff's due process claim against defendant John Doe I be transferred to  
18 this District. (Dkt. No. 33.) Judge Cauthron adopted the Report and Recommendation and  
19 the case was transferred to this District on September 30, 2011. (Dkt. Nos. 34 and 35.)

20 After the case was received in this District, the undersigned conducted an initial  
21 screening of plaintiff's claims against John Doe I and determined that plaintiff's complaint  
22 contained two significant deficiencies which precluded the case from moving forward.

01 Accordingly, on October 31, 2011, this Court issued an Order declining to serve the complaint  
02 and granting plaintiff leave to amend. (Dkt. No. 38.) The Court noted in its Order that  
03 defendant John Doe I had not been identified with sufficient specificity to permit the Court to  
04 effectuate service. (*Id.* at 3.) The Court explained that if it could not effectuate service, it  
05 could not obtain jurisdiction over this individual. (*Id.*) The Court further noted that plaintiff  
06 had not stated any viable claim for relief against defendant John Doe I. (*Id.*) Plaintiff was  
07 granted thirty days within which to file an amended complaint curing the noted deficiencies.  
08 (*Id.*)

09 On November 28, 2011, plaintiff filed his first amended complaint. (Dkt. No. 39.) In  
10 that document, plaintiff identified John Doe I and the Bureau of Prisons as defendants in his  
11 amended complaint. (*Id.*) Plaintiff reiterated therein his claims concerning John Doe I, but  
12 failed to provide any further identifying information for this individual. (*Id.*) Plaintiff also  
13 asserted claims against the BOP. Specifically, plaintiff asserted that the BOP violated his First  
14 and Eighth Amendment rights when BOP employees at FTC Oklahoma City had him placed in  
15 segregation as a result of the information concerning plaintiff's prior KKK affiliation which  
16 was improperly placed in his prison file by John Doe I. (*Id.*)

17 After reviewing plaintiff's first amended complaint, this Court ordered that the  
18 complaint be served on the BOP. (Dkt. No. 41.) The Court was unable to serve the amended  
19 complaint on defendant John Doe I because of the lack of identifying information. On April 5,  
20 2012, the United States filed the pending motion to dismiss. (Dkt. No. 46.) Plaintiff filed a  
21 response in opposition to the government's motion to dismiss and the United States filed a reply  
22 brief in support of its motion. (Dkt. Nos. 52 and 53.) The motion to dismiss is now ripe for

01 review.

02 DISCUSSION

03 The United States argues in its motion to dismiss that the claims against John Doe I  
04 must be dismissed because (1) this Court lacks personal jurisdiction over John Doe I; (2)  
05 plaintiff failed to exhaust his administrative remedies for his claim against John Doe I; and, (3)  
06 plaintiff's claims against John Doe I are barred by qualified immunity. The United States  
07 further argues that plaintiff's claims against the BOP must be dismissed because the claims  
08 were previously dismissed and raising the claims again exceeds the scope of the Tenth Circuit's  
09 remand order.

10 Defendant John Doe I

11 The United States first argues in its motion to dismiss that plaintiff's claim against John  
12 Doe I must be dismissed because this Court lacks personal jurisdiction over this individual.  
13 The United States is correct.

14 Plaintiff has identified John Doe I as a Special Investigative Supervisor ("S.I.S.")  
15 responsible for classifying new inmates at the Federal Detention Center in SeaTac,  
16 Washington. (*See* Dkt. No. 1 at 7.) This Court advised plaintiff in its Order declining to serve  
17 his complaint and granting him leave to amend that John Doe I had not been identified with  
18 sufficient specificity to allow the Court to effectuate service and that, without service, the Court  
19 could not obtain jurisdiction over this individual. The Court further advised plaintiff that if he  
20 wished to proceed with this action, he would have to provide the Court with more specific  
21 identifying information for John Doe I.

22 Plaintiff's amended complaint did not contain any additional identifying information

01 for John Doe I. In a letter received by the Court on the same date as the amended complaint,  
02 plaintiff informed the Court that he had no way to obtain the name of John Doe I but that he had  
03 sent a letter to the United States Attorney's Office for the Western District of Washington  
04 requesting information regarding John Doe I. (Dkt. No. 40.) Plaintiff indicated that he had  
05 not received a response from United States Attorney's Office and he requested that this Court  
06 urge the United States Attorney's Office to provide the requested information. (*Id.*) As it is  
07 not the responsibility of the United States Attorney's Office to identify plaintiff's defendants  
08 for him, the Court denies plaintiff's request.

09 It is clear at this juncture that plaintiff is unable to identify defendant John Doe I with  
10 sufficient specificity to allow the Court to effectuate service. Because the Court is unable to  
11 serve John Doe I, the Court has no personal jurisdiction over this defendant. *See Omni v.*  
12 *Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Accordingly,  
13 plaintiff's claims against John Doe I must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) for  
14 lack of personal jurisdiction.<sup>2</sup>

15 Defendant Bureau of Prisons

16 The United States argues that plaintiff's claims against the BOP must also be dismissed  
17 because plaintiff is attempting to resurrect claims that were previously dismissed and the claims  
18 exceed the scope of the Tenth Circuit's remand order. Again, the United States is correct.

19 Plaintiff appears to assert in his amended complaint that the BOP violated his First  
20 Amendment right to freedom of speech and association and his Eighth Amendment right to be  
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22 <sup>2</sup> Because the Court agrees that it lacks personal jurisdiction over John Doe I, the Court need not address  
the remaining arguments presented in the motion to dismiss urging dismissal of the claims against John Doe I.

01 free from cruel and unusual punishment. Plaintiff asserted identical claims in his original  
02 complaint. The Western District of Oklahoma dismissed plaintiff's claims against the BOP,  
03 and two other agencies, on the grounds that Congress had not extended the *Bivens* remedy to  
04 federal agencies and, thus, that plaintiff could not bring a *Bivens* action against any of the named  
05 federal agencies. (*See* Dkt. No. 13.) The Tenth Circuit upheld the dismissal and remanded  
06 the case only for a determination as to whether the claims against John Doe I should be  
07 dismissed without prejudice or transferred.

08 Plaintiff appears to argue in his response to the motion to dismiss that the claim asserted  
09 against the BOP in his amended complaint is different from the claims asserted in his original  
10 complaint and that it should therefore be permitted. (*See* Dkt. No. 52.) Plaintiff also  
11 emphasizes that he has amended his request for relief, requesting only prospective relief in the  
12 form of an injunction precluding the BOP and its employees from considering the fact of  
13 Driggers' past political history or KKK involvement for any purpose, including housing and  
14 programming.<sup>3</sup>

15 Despite plaintiff's attempt to distinguish the claims asserted in his amended complaint  
16 from those asserted in his original complaint, the claims are essentially the same; *i.e.*, reference  
17 to plaintiff's KKK affiliation in his BOP record violates his First and Eighth Amendment rights.  
18 This Court concurs with the United States that plaintiff should not be permitted to reassert  
19 claims that were previously dismissed and the which were not a part of the very limited remand  
20 by the Tenth Circuit.

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 <sup>3</sup> Plaintiff had requested in his original complaint that defendants delete from their records references to plaintiff's KKK affiliation.



Moreover, this remains a *Bivens* action and it remains the case that the BOP is an agency of the United States and, thus, is not subject to suit under *Bivens*. See *FDIC v. Meyer*, 510 U.S. 471, 486 (1994). Even assuming plaintiff had identified in his amended complaint a viable basis for this Court's jurisdiction over a claim for prospective relief against the BOP, plaintiff's claims against the BOP appear to arise solely out of his claims of alleged unconstitutional conduct by John Doe I and BOP employees at FTC Oklahoma. Plaintiff's claims against the FTC Oklahoma employees did not pass muster with either the Western District of Oklahoma or the Tenth Circuit, and plaintiff failed to allege any viable cause of action against John Doe I in this case.<sup>4</sup> Accordingly, plaintiff's claims against the BOP should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

#### CONCLUSION

For the reasons set forth above, this Court recommends that the motion of the United States to dismiss plaintiff's claims against John Doe I and the BOP be granted. The Court further recommends that plaintiff's amended complaint, and this action, be dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 13th day of July, 2012.



Mary Alice Theiler  
United States Magistrate Judge

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<sup>4</sup> It is noteworthy that while plaintiff seeks to enjoin the BOP from considering the fact of his prior KKK affiliation for any purpose in the future, he appears to concede that the only occasions on which this information has been used to his detriment were the two occasions when he was confined at FTC Oklahoma in August 2008 and July 2010. There is nothing to suggest that this information has presented any sort of ongoing problem for plaintiff while in BOP custody.